

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

TESSERA, INC.,

Plaintiff,

v.

ADVANCED MICRO DEVICES, INC. et al.,

Defendants.

AND RELATED COUNTERCLAIMS.

No. C 05-4063 CW

ORDER GRANTING IN
PART PLAINTIFF'S
MOTION FOR
MODIFICATION OF
THE CASE
MANAGEMENT
SCHEDULE, VACATING
DATES IN CASE
MANAGEMENT
SCHEDULE AND
ORDERING PARTIES
TO SHOW CAUSE WHY
COURT-APPOINTED
EXPERT SHOULD NOT
BE APPOINTED

Plaintiff Tessera, Inc. moves to modify the case management schedule. Defendants oppose the motion, stating that, although they would agree to an extension of discovery and other deadlines, Plaintiff's six-month extension of discovery is unwarranted. The matter was decided on the papers. Having considered the parties' papers and good cause appearing, the Court grants Plaintiff's motion in part and vacates the dates provided in the case management schedule.

Federal Rule of Civil Procedure 16 provides that a case management schedule can be modified upon a showing of good cause and by leave of the district judge. The Ninth Circuit has stated

1 that the "'good cause' standard primarily considers the diligence
2 of the party seeking the amendment. The district court may modify
3 the pretrial schedule 'if it cannot reasonably be met despite the
4 diligence of the party seeking the extension.'" Johnson v. Mammoth
5 Recreations, Inc., 975 F.2d 604, 609 (9th Cir. 1992) (quoting Fed.
6 R. Civ. P. 16 advisory committee's notes (1983 amendment)).

7 The Court finds good cause for modifying the case management
8 schedule. The Court, however, will adopt neither Plaintiff's
9 requested modification nor Defendants' proposed modification.
10 Rather, the Court vacates the dates provided in the case management
11 schedule. Fact discovery will remain open until at least June 1,
12 2007.

13 The parties are ordered to meet and confer concerning a
14 proposed revised case management schedule and, if necessary, to
15 address this matter with the special master. This proposed case
16 management schedule should address two different scenarios: one in
17 which the Court bifurcates liability and damages, as recommended by
18 the special master in his March 7, 2006 order, and one in which the
19 Court does not. The parties will submit their proposed schedules
20 three weeks from the date of this order. If the parties, however,
21 cannot reach agreement, Plaintiff and Defendants are ordered to
22 submit, three weeks from the date of this order, their proposed
23 schedules and no more than five pages of argument as to why the
24 Court should adopt their proposed schedules.¹ Included with the
25 proposed schedules, the parties are to provide the Court with
26

27 ¹Plaintiff's motion for leave to file a supplemental brief in
28 support of its motion for modification of the case management
(Docket No. 395) schedule is GRANTED.

1 commentary, no more than five pages per side, on their position
2 concerning whether liability and damages should be bifurcated.

3 Within three weeks from the date of this order, the parties
4 are also ordered to show cause why an expert witness should not be
5 appointed by the Court to testify to the jury on the technology at
6 issue. See Fed. R. Evid. 706.² The parties shall meet and confer
7 concerning the individual that the Court should select as the
8 court-appointed expert, if it determines that a court-appointed
9 expert is suitable in this case. If the parties cannot agree on
10 the individual, the parties shall try to agree on the process for
11 selecting the individual and shall inform the Court of the agreed
12 process. If the parties cannot agree on a process, the parties
13 will provide the Court with commentary, no more than five pages per
14 side, on why the Court should use their proposed process. The
15 parties are also ordered to submit a proposed schedule, including
16 when the parties would provide the court-appointed expert with
17 information, and what information should be provided, when the
18 court-appointed expert's report should be due and when the parties
19 would depose the court-appointed expert.

20 The Court will consider the parties' proposed schedules and
21 statements and then issue an order.

22 IT IS SO ORDERED.

23 Dated: 3/13/07



24 CLAUDIA WILKEN
25 United States District Judge
26
27

28 ²The Court finds that the technology at issue in this case is particularly difficult for a lay jury to understand.